Sunday, December 5, 2010

Enforcement
Subcommittee Agenda

Agenda Item 3

Approval of September 27, 2010, Minutes

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR

Dental Hygiene Committee of California
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Dental Hygiene Committee of California

Enforcement Subcommittee Meeting

Department of Consumer Affairs
2005 Evergreen Street
Sacramento, CA 95815

September 27, 2010

Minutes - DRAFT

DRAFT

1. Roll Call/Establishment of Quorum

Members Present	Staff Present
Alex Calero, Chair	Lori Hubble, Executive Officer
Miriam DeLaRoi, RDHAP	Tom Jurach
Cathy DiFrancesco, RDH	Shirley Moody
	Dennis Patzer

At 11:43 a.m., Mr. Calero called roll and established a quorum.

2. Public Comment

There was no public comment.

3. Approval of Enforcement Subcommitee Minutes 4/30/2010

M/s/c (DeLaRoi/DiFrancesco) to accept the minutes with the added date of April 30th. Motion passed unanimously. Mr. Calero would like to be addressed as Alex instead of Alexander.

4. Chairperson's Report

Mr. Calero reported two items. First is to notice the Enforcement Subcommittee that the enforcement statistics will be discussed in the Executive Officer Report during tomorrow's full committee meeting. He also informed the subcommittee of the status of SB 1111 which failed to pass out of committee, but explained that we may see some new legislation in the future.

5. Proposed DHCC Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

It was m/s/c (DeLaRoi/DiFrancesco) to accept the proposed regulations for DHCC Uniform Standards Related to Substance Abuse and Disciplinary Guidelines. Mr. Calero and others came up with a list of small substantive

changes. He stated that the non-substantive changes (punctuation, grammar, etc.) will be taken care of by staff and do not require time in the meeting to discuss. M/s/c (DiFrancesco/DeLaRoi) to bring the modified document to the full committee for acceptance. Motion passed unanimously.

6. Proposed Regulations for Cite and Fine

Citations and Fines and associated verbiage were recommended and discussed by legal counsel based on best practices with other boards which have written their own cite and fine regulations. M/s/c (DiFrancesco/DeLaRoi) to accept the proposed regulations for Cite and Fine and any updates or revisions and recommend that the full committee approve this and begin the regulatory process. Motion passed unanimously.

7. Report on Enforcement Improvement Plan

Ms. Moody reported on reporting statistics tracked by DCA. Questions were posed regarding the meaning of the statistics and Ms. Moody explained the various acronyms used, their meaning, and value to the Department. This report monitors time frames and DCA uses this information to track the time taken to close cases.

Ms. Moody then reported on DHCC actions to support the Enforcement Improvement Plan. The DHCC Enforcement Improvement Plan includes the hiring of additional staff, creation of Desk Manuals for the Enforcement Staff, creation of the Disciplinary Guidelines, and the creation of a pool of Expert Witnesses to review the Quality of Care Cases.

8. Proposed regulations to implement DCA recommendation to strengthen DHCC's enforcement program pursuant to Consumer Protection Initiative (CPEI)

Ms. Hubble reported on recommendations to strengthen the DHCC enforcement process in the absence of SB 1111. DCA has recommended the creation of regulations in the following areas in SB 1111's absence:

1. Committee delegation to Executive Officer of approval for decisions on stipulated settlements to revoke or surrender a license.
2. Failure to provide information or cooperate in an investigation constitutes unprofessional conduct.
3. Failure to report an arrest, conviction, etc. constitute unprofessional conduct.
4. Denial of application for a registered sex offender.

M/s/c (DeLaRoi/DiFrancesco) to develop regulations with respect to the 4 items under ENF – 8 which includes the arrest language at which point after staff develops this language it will come back to subcommittee for review and we will revisit this topic, again. Motion passed unanimously.

9. Future Agenda Items

JoAnn Galliano would like to address peer review legislation for Dental Hygiene.

Meeting adjourned at 3:48 p.m.

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Enforcement
Subcommittee Agenda

Agenda Item 5

Enforcement Statistics

Open Investigations 28

Field Investigations (12)

Drugs & Alcohol	2
Misleading Ad	1
Negligence	4
Mental Illness	2
Practice Beyond Scope	1
Unlicensed Practice	2

Records Requests (16)

Drugs & Alcohol	6
Domestic Violence	2
Theft	2
Lying of App	4
Disobeying Court Order	2

Probationers 12

Active (7)

Drugs & Alcohol	2
Petty Theft	1
Grand Theft	1
Unlicensed Practice	3

Tolling (5)

Drugs & Alcohol	2
Negligence	1
Unlicensed Practice	1

Sunday, December 5, 2010

Enforcement
Subcommittee Agenda

Agenda Item 6

Discussion and Consideration of Peer Review

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR

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MEMORANDUM

DATE	November 12, 2010
TO	DHCC Subcommittee Members
FROM	Lori Hubble, Executive Officer Dental Hygiene Committee of California
SUBJECT	**ENF 6 Discussion and Consideration of Peer Review**

Peer Review is a process that occurs outside of a boards established functions.

"Peer review" in existing law means both the following:

1. A process in which a peer review body reviews the basic qualifications, staff privileges, employment, medical outcomes, or professional conduct of licentiates to make recommendations for quality improvement and education, if necessary in order to do either or both of the following:
    - Determine whether a licentiate may practice or continue to practice in a health care facility, clinic, or other setting providing medical services and, if so to determine the parameters of that practice.
    - Assess and improve the quality of care rendered in a health care facility, clinic, or other setting providing medical services.

"Peer review body" in existing law includes:

1. A medical or professional staff of any health care facility or clinic licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code or of a facility certified to participate in the federal Medicare Program as an ambulatory surgical center.
2. A health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the health and Safety Code or a disability insurer that contracts with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code.
3. Any medical, psychological, marriage and family therapy, social work, dental, or podiatric professional society having as member at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.
4. A committee organized by any entity consisting of or employing more than 25 licentiates of the same class that functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

Under existing law “Peer Review” outcomes of a disciplinary nature involving but limited to; incompetence, substance abuse, excessive prescribing or furnishing of controlled substances, or sexual misconduct are required to be reported and filed in the form of an “805” report to specified boards within the Department of Consumer Affairs. The Dental Hygiene Committee of California is not one of the entities that receive reports on the outcomes of negative peer reviews.

A “805 report” under existing law means the written report required by law by the chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic within 15 days after the effective date on which any of the following occur as a result of an action of a peer review body:

1. A licentiate’s application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.
2. A licentiate’s membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.
3. Restrictions are imposed, or voluntarily accepted, on staff privileges, membership or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.

When an “805” report is received by the licensing agency from a peer review body an investigative case is opened by the licensing agency and pertinent documentation is requested. Peer review outcomes may be disclosed at a disciplinary hearing.

It should be noted that a search of the Dental Hygienist Associations websites of the west coast associations disclosed not “Peer Review” provisions.

CONCLUSION

Legislation would be required for the Dental Hygiene Committee to participate in the “805 report” form filing requirement.

Attached is a copy of the Chaptered version of Senate Bill No. 700, amending Sections 800, 803.1, 805, 805.1, 805.5, 2027 and 2220 of, and the addition of Section 805.01 to, the Business and Professions Code, relating to healing arts.

Senate Bill No. 700

CHAPTER 505

An act to amend Sections 800, 803.1, 805, 805.1, 805.5, 2027, and 2220 of, and to add Section 805.01 to, the Business and Professions Code, relating to healing arts.

[Approved by Governor September 29, 2010. Filed with Secretary of State September 29, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

SB 700, Negrete McLeod. Healing arts: peer review.

Existing law provides for the professional review of specified healing arts licentiates through a peer review process.

This bill would define the term "peer review" for purposes of those provisions.

Under existing law, specified persons are required to file a report, designated as an "805 report," with a licensing board within 15 days after a specified action is taken against a person licensed by that board.

This bill would also require specified persons to file a report with a licensing board within 15 days after a peer review body makes a decision or recommendation regarding the disciplinary action to be taken against a licentiate of that board based on the peer review body's determination, following formal investigation, that the licentiate may have engaged in various acts, including incompetence, substance abuse, excessive prescribing or furnishing of controlled substances, or sexual misconduct, among other things. The bill would authorize the board to inspect and copy certain documents in the record of that investigation.

Existing law requires the board to maintain an 805 report for a period of 3 years after receipt.

This bill would require the board to maintain the report electronically.

Existing law authorizes the Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California to inspect and copy certain documents in the record of any disciplinary proceeding resulting in action that is required to be reported in an 805 report.

This bill would specify that the boards have the authority to also inspect, as permitted by other applicable law, any certified copy of medical records in the record of the disciplinary proceeding.

Existing law requires specified healing arts boards to maintain a central file of their licensees containing, among other things, disciplinary information reported through 805 reports.

Under this bill, if a court finds, in a final judgment, that the peer review resulting in the 805 report was conducted in bad faith and the licensee who

is the subject of the report notifies the board of that finding, the board would be required to include that finding in the licensee's central file.

Existing law requires the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine to disclose an 805 report to specified health care entities and to disclose certain hospital disciplinary actions to inquiring members of the public. Existing law also requires the Medical Board of California to post hospital disciplinary actions regarding its licensees on the Internet.

This bill would prohibit those disclosures, and would require the Medical Board of California to remove certain information posted on the Internet, if a court finds, in a final judgment, that the peer review resulting in the 805 report or the hospital disciplinary action was conducted in bad faith and the licensee notifies the board of that finding. The bill would also require the Medical Board of California to include certain exculpatory or explanatory statements in those disclosures or postings and would require the board to post on the Internet a factsheet that explains and provides information on the 805 reporting requirements.

Existing law also requires the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine to disclose to an inquiring member of the public information regarding enforcement actions taken against a licensee by the board or by another state or jurisdiction.

This bill would also require those boards to make those disclosures regarding enforcement actions taken against former licensees.

The bill would make related technical and nonsubstantive changes.

The people of the State of California do enact as follows:

SECTION 1. Section 800 of the Business and Professions Code is amended to read:

800. (a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, the California State Board of Pharmacy, the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, the California Board of Occupational Therapy, and the Acupuncture Board shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

(1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803.

(2) Any judgment or settlement requiring the licensee or his or her insurer to pay any amount of damages in excess of three thousand dollars ($3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.

(3) Any public complaints for which provision is made pursuant to subdivision (b).

(4) Disciplinary information reported pursuant to Section 805, including any additional exculpatory or explanatory statements submitted by the licentiate pursuant to subdivision (f) of Section 805. If a court finds, in a final judgment, that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board shall include that finding in the central file. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.

(5) Information reported pursuant to Section 805.01, including any explanatory or exculpatory information submitted by the licensee pursuant to subdivision (b) of that section.

(b) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.

The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information that the board shall include in the central file.

Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

These disclosures shall effect no change in the confidential status of these records.

SEC. 2. Section 803.1 of the Business and Professions Code is amended to read:

803.1. (a) Notwithstanding any other provision of law, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information regarding any enforcement actions taken against a licensee, including a former licensee, by the board or by another state or jurisdiction, including all of the following:

(1) Temporary restraining orders issued.

(2) Interim suspension orders issued.

(3) Revocations, suspensions, probations, or limitations on practice ordered by the board, including those made part of a probationary order or stipulated agreement.

(4) Public letters of reprimand issued.

(5) Infractions, citations, or fines imposed.

(b) Notwithstanding any other provision of law, in addition to the information provided in subdivision (a), the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public all of the following:

(1) Civil judgments in any amount, whether or not vacated by a settlement after entry of the judgment, that were not reversed on appeal and arbitration awards in any amount of a claim or action for damages for death or personal injury caused by the physician and surgeon's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services.

(2) (A) All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in the low-risk category if there are three or more settlements for that licensee within the last 10 years, except for settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in the high-risk category if there are four or more settlements for that licensee within the last 10 years except for settlements by a licensee regardless of

the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. Classification of a licensee in either a "high-risk category" or a "low-risk category" depends upon the specialty or subspecialty practiced by the licensee and the designation assigned to that specialty or subspecialty by the Medical Board of California, as described in subdivision (f). For the purposes of this paragraph, "settlement" means a settlement of an action described in paragraph (1) entered into by the licensee on or after January 1, 2003, in an amount of thirty thousand dollars ($30,000) or more.

(B) The board shall not disclose the actual dollar amount of a settlement but shall put the number and amount of the settlement in context by doing the following:

(i) Comparing the settlement amount to the experience of other licensees within the same specialty or subspecialty, indicating if it is below average, average, or above average for the most recent 10-year period.

(ii) Reporting the number of years the licensee has been in practice.

(iii) Reporting the total number of licensees in that specialty or subspecialty, the number of those who have entered into a settlement agreement, and the percentage that number represents of the total number of licensees in the specialty or subspecialty.

(3) Current American Board of Medical Specialty certification or board equivalent as certified by the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine.

(4) Approved postgraduate training.

(5) Status of the license of a licensee. By January 1, 2004, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall adopt regulations defining the status of a licensee. The board shall employ this definition when disclosing the status of a licensee pursuant to Section 2027.

(6) Any summaries of hospital disciplinary actions that result in the termination or revocation of a licensee's staff privileges for medical disciplinary cause or reason, unless a court finds, in a final judgment, that the peer review resulting in the disciplinary action was conducted in bad faith and the licensee notifies the board of that finding. In addition, any exculpatory or explanatory statements submitted by the licentiate electronically pursuant to subdivision (f) of that section shall be disclosed. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.

(c) Notwithstanding any other provision of law, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information received regarding felony convictions of a physician and surgeon or doctor of podiatric medicine.

(d) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine may formulate appropriate disclaimers or explanatory statements to be included with any information released, and may by regulation establish categories of information that need not be disclosed to an inquiring member of the public because that information is unreliable or not sufficiently related to the licensee's professional practice. The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall include the following statement when disclosing information concerning a settlement:

"Some studies have shown that there is no significant correlation between malpractice history and a doctor's competence. At the same time, the State of California believes that consumers should have access to malpractice information. In these profiles, the State of California has given you information about both the malpractice settlement history for the doctor's specialty and the doctor's history of settlement payments only if in the last 10 years, the doctor, if in a low-risk specialty, has three or more settlements or the doctor, if in a high-risk specialty, has four or more settlements. The State of California has excluded some class action lawsuits because those cases are commonly related to systems issues such as product liability, rather than questions of individual professional competence and because they are brought on a class basis where the economic incentive for settlement is great. The State of California has placed payment amounts into three statistical categories: below average, average, and above average compared to others in the doctor's specialty. To make the best health care decisions, you should view this information in perspective. You could miss an opportunity for high-quality care by selecting a doctor based solely on malpractice history.

When considering malpractice data, please keep in mind:

Malpractice histories tend to vary by specialty. Some specialties are more likely than others to be the subject of litigation. This report compares doctors only to the members of their specialty, not to all doctors, in order to make an individual doctor's history more meaningful.

This report reflects data only for settlements made on or after January 1, 2003. Moreover, it includes information concerning those settlements for a 10-year period only. Therefore, you should know that a doctor may have made settlements in the 10 years immediately preceding January 1, 2003, that are not included in this report. After January 1, 2013, for doctors practicing less than 10 years, the data covers their total years of practice. You should take into account the effective date of settlement disclosure as well as how long the doctor has been in practice when considering malpractice averages.

The incident causing the malpractice claim may have happened years before a payment is finally made. Sometimes, it takes a long time for a malpractice lawsuit to settle. Some doctors work primarily with high-risk patients. These doctors may have malpractice settlement histories that are

higher than average because they specialize in cases or patients who are at very high risk for problems.

Settlement of a claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the doctor. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.

You may wish to discuss information in this report and the general issue of malpractice with your doctor."

(e) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall, by regulation, develop standard terminology that accurately describes the different types of disciplinary filings and actions to take against a licensee as described in paragraphs (1) to (5), inclusive, of subdivision (a). In providing the public with information about a licensee via the Internet pursuant to Section 2027, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall not use the terms "enforcement," "discipline," or similar language implying a sanction unless the physician and surgeon has been the subject of one of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).

(f) The Medical Board of California shall adopt regulations no later than July 1, 2003, designating each specialty and subspecialty practice area as either high risk or low risk. In promulgating these regulations, the board shall consult with commercial underwriters of medical malpractice insurance companies, health care systems that self-insure physicians and surgeons, and representatives of the California medical specialty societies. The board shall utilize the carriers' statewide data to establish the two risk categories and the averages required by subparagraph (B) of paragraph (2) of subdivision (b). Prior to issuing regulations, the board shall convene public meetings with the medical malpractice carriers, self-insurers, and specialty representatives.

(g) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall provide each licensee, including a former licensee under subdivision (a), with a copy of the text of any proposed public disclosure authorized by this section prior to release of the disclosure to the public. The licensee shall have 10 working days from the date the board provides the copy of the proposed public disclosure to propose corrections of factual inaccuracies. Nothing in this section shall prevent the board from disclosing information to the public prior to the expiration of the 10-day period.

(h) Pursuant to subparagraph (A) of paragraph (2) of subdivision (b), the specialty or subspecialty information required by this section shall group physicians by specialty board recognized pursuant to paragraph (5) of subdivision (h) of Section 651 unless a different grouping would be more

valid and the board, in its statement of reasons for its regulations, explains why the validity of the grouping would be more valid.

SEC. 3. Section 805 of the Business and Professions Code is amended to read:

805. (a) As used in this section, the following terms have the following definitions:

(1) (A) "Peer review" means both of the following:

(i) A process in which a peer review body reviews the basic qualifications, staff privileges, employment, medical outcomes, or professional conduct of licentiates to make recommendations for quality improvement and education, if necessary, in order to do either or both of the following:

(I) Determine whether a licentiate may practice or continue to practice in a health care facility, clinic, or other setting providing medical services, and, if so, to determine the parameters of that practice.

(II) Assess and improve the quality of care rendered in a health care facility, clinic, or other setting providing medical services.

(ii) Any other activities of a peer review body as specified in subparagraph (B).

(B) "Peer review body" includes:

(i) A medical or professional staff of any health care facility or clinic licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code or of a facility certified to participate in the federal Medicare Program as an ambulatory surgical center.

(ii) A health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that contracts with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code.

(iii) Any medical, psychological, marriage and family therapy, social work, dental, or podiatric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.

(iv) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class that functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) "Licentiate" means a physician and surgeon, doctor of podiatric medicine, clinical psychologist, marriage and family therapist, clinical social worker, or dentist. "Licentiate" also includes a person authorized to practice medicine pursuant to Section 2113 or 2168.

(3) "Agency" means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).

(4) "Staff privileges" means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges,

active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(5) "Denial or termination of staff privileges, membership, or employment" includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, if the action is based on medical disciplinary cause or reason.

(6) "Medical disciplinary cause or reason" means that aspect of a licentiate's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) "805 report" means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after the effective date on which any of the following occur as a result of an action of a peer review body:

(1) A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

(2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.

(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.

(c) If a licentiate takes any action listed in paragraph (1), (2), or (3) after receiving notice of a pending investigation initiated for a medical disciplinary cause or reason or after receiving notice that his or her application for membership or staff privileges is denied or will be denied for a medical disciplinary cause or reason, the chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic where the licentiate is employed or has staff privileges or membership or where the licentiate applied for staff privileges or membership, or sought the renewal thereof, shall file an 805 report with the relevant agency within 15 days after the licentiate takes the action.

(1) Resigns or takes a leave of absence from membership, staff privileges, or employment.

(2) Withdraws or abandons his or her application for staff privileges or membership.

(3) Withdraws or abandons his or her request for renewal of staff privileges or membership.

(d) For purposes of filing an 805 report, the signature of at least one of the individuals indicated in subdivision (b) or (c) on the completed form shall constitute compliance with the requirement to file the report.

(e) An 805 report shall also be filed within 15 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

(f) A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information, electronically or otherwise, pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report. The notice shall also advise the licentiate that information submitted electronically will be publicly disclosed to those who request the information.

The information to be reported in an 805 report shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

If another peer review body is required to file an 805 report, a health care service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason. If the Medical Board of California or a licensing agency of another state revokes or suspends, without a stay, the license of a physician and surgeon, a peer review body is not required to file an 805 report when it takes an action as a result of the revocation or suspension.

(g) The reporting required by this section shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and Sections 803.1 and 2027, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976.

(h) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall disclose reports as required by Section 805.5.

(i) An 805 report shall be maintained electronically by an agency for dissemination purposes for a period of three years after receipt.

(j) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(k) A willful failure to file an 805 report by any person who is designated or otherwise required by law to file an 805 report is punishable by a fine not to exceed one hundred thousand dollars ($100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the

person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licentiate. A person who is alleged to have violated this subdivision may assert any defense available at law. As used in this subdivision, "willful" means a voluntary and intentional violation of a known legal duty.

(*l*) Except as otherwise provided in subdivision (k), any failure by the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report, shall be punishable by a fine that under no circumstances shall exceed fifty thousand dollars ($50,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. The amount of the fine imposed, not exceeding fifty thousand dollars ($50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.

(m) A health care service plan licensed under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.

SEC. 4. Section 805.01 is added to the Business and Professions Code, to read:

805.01. (a) As used in this section, the following terms have the following definitions:

(1) "Agency" has the same meaning as defined in Section 805.

(2) "Formal investigation" means an investigation performed by a peer review body based on an allegation that any of the acts listed in paragraphs (1) to (4), inclusive, of subdivision (b) occurred.

(3) "Licentiate" has the same meaning as defined in Section 805.

(4) "Peer review body" has the same meaning as defined in Section 805.

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file a report with the relevant agency within 15 days after a peer review body makes a final decision or recommendation regarding the disciplinary action, as specified in subdivision (b) of Section 805, resulting in a final proposed action to be taken against a licentiate based on the peer review body's determination, following formal investigation of the licentiate, that any of the acts listed in paragraphs (1) to (4), inclusive, may have occurred, regardless of whether a hearing is held pursuant to Section 809.2. The licentiate shall receive a notice of the proposed action as set forth in Section 809.1, which shall also include a notice advising the licentiate of the right to submit additional explanatory or exculpatory statements electronically or otherwise.

(1) Incompetence, or gross or repeated deviation from the standard of care involving death or serious bodily injury to one or more patients, to the extent or in such a manner as to be dangerous or injurious to any person or to the public. This paragraph shall not be construed to affect or require the imposition of immediate suspension pursuant to Section 809.5.

(2) The use of, or prescribing for or administering to himself or herself, any controlled substance; or the use of any dangerous drug, as defined in Section 4022, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licentiate, any other person, or the public, or to the extent that such use impairs the ability of the licentiate to practice safely.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith effort prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain, consistent with lawful prescribing, be reported for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Sexual misconduct with one or more patients during a course of treatment or an examination.

(c) The relevant agency shall be entitled to inspect and copy the following documents in the record of any formal investigation required to be reported pursuant to subdivision (b):

(1) Any statement of charges.

(2) Any document, medical chart, or exhibit.

(3) Any opinions, findings, or conclusions.

(4) Any certified copy of medical records, as permitted by other applicable law.

(d) The report provided pursuant to subdivision (b) and the information disclosed pursuant to subdivision (c) shall be kept confidential and shall not be subject to discovery, except that the information may be reviewed as provided in subdivision (c) of Section 800 and may be disclosed in any subsequent disciplinary hearing conducted pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(e) The report required under this section shall be in addition to any report required under Section 805.

(f) A peer review body shall not be required to make a report pursuant to this section if that body does not make a final decision or recommendation regarding the disciplinary action to be taken against a licentiate based on the body's determination that any of the acts listed in paragraphs (1) to (4), inclusive, of subdivision (b) may have occurred.

SEC. 5. Section 805.1 of the Business and Professions Code is amended to read:

805.1. (a) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall be entitled to inspect and copy the following documents in the record of any disciplinary proceeding resulting in action that is required to be reported pursuant to Section 805:

(1) Any statement of charges.

(2) Any document, medical chart, or exhibits in evidence.

(3) Any opinion, findings, or conclusions.

(4) Any certified copy of medical records, as permitted by other applicable law.

(b) The information so disclosed shall be kept confidential and not subject to discovery, in accordance with Section 800, except that it may be reviewed, as provided in subdivision (c) of Section 800, and may be disclosed in any subsequent disciplinary hearing conducted pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 6. Section 805.5 of the Business and Professions Code is amended to read:

805.5. (a) Prior to granting or renewing staff privileges for any physician and surgeon, psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or any health care service plan or medical care foundation, or the medical staff of the institution shall request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, or the Dental Board of California to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted as provided in Section 805. The request shall include the name and California license number of the physician and surgeon,

psychologist, podiatrist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record.

(b) Upon a request made by, or on behalf of, an institution described in subdivision (a) or its medical staff the board shall furnish a copy of any report made pursuant to Section 805 as well as any additional exculpatory or explanatory information submitted electronically to the board by the licensee pursuant to subdivision (f) of that section. However, the board shall not send a copy of a report (1) if the denial, removal, or restriction was imposed solely because of the failure to complete medical records, (2) if the board has found the information reported is without merit, (3) if a court finds, in a final judgment, that the peer review, as defined in Section 805, resulting in the report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, or (4) if a period of three years has elapsed since the report was submitted. This three-year period shall be tolled during any period the licentiate has obtained a judicial order precluding disclosure of the report, unless the board is finally and permanently precluded by judicial order from disclosing the report. If a request is received by the board while the board is subject to a judicial order limiting or precluding disclosure, the board shall provide a disclosure to any qualified requesting party as soon as practicable after the judicial order is no longer in force.

If the board fails to advise the institution within 30 working days following its request for a report required by this section, the institution may grant or renew staff privileges for the physician and surgeon, psychologist, podiatrist, or dentist.

(c) Any institution described in subdivision (a) or its medical staff that violates subdivision (a) is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars ($200) nor more than one thousand two hundred dollars ($1,200).

SEC. 7. Section 2027 of the Business and Professions Code is amended to read:

2027. (a) The board shall post on the Internet the following information in its possession, custody, or control regarding licensed physicians and surgeons:

(1) With regard to the status of the license, whether or not the licensee is in good standing, subject to a temporary restraining order (TRO), subject to an interim suspension order (ISO), or subject to any of the enforcement actions set forth in Section 803.1.

(2) With regard to prior discipline, whether or not the licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(3) Any felony convictions reported to the board after January 3, 1991.

(4) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" shall mean an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law

judge and the Medical Board of California unless an appeal of that decision is pending.

(5) Any malpractice judgment or arbitration award reported to the board after January 1, 1993.

(6) Any hospital disciplinary actions that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason. The posting shall also provide a link to any additional explanatory or exculpatory information submitted electronically by the licensee pursuant to subdivision (f) of Section 805.

(7) Any misdemeanor conviction that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(8) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(9) Any information required to be disclosed pursuant to Section 803.1.

(b) (1) From January 1, 2003, the information described in paragraphs (1) (other than whether or not the licensee is in good standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain posted for a period of 10 years from the date the board obtains possession, custody, or control of the information, and after the end of that period shall be removed from being posted on the board's Internet Web site. Information in the possession, custody, or control of the board prior to January 1, 2003, shall be posted for a period of 10 years from January 1, 2003. Settlement information shall be posted as described in paragraph (2) of subdivision (b) of Section 803.1.

(2) The information described in paragraphs (3) and (6) of subdivision (a) shall not be removed from being posted on the board's Internet Web site.

(3) Notwithstanding paragraph (2) and except as provided in paragraph (4), if a licensee's hospital staff privileges are restored and the licensee notifies the board of the restoration, the information pertaining to the termination or revocation of those privileges, as described in paragraph (6) of subdivision (a), shall remain posted for a period of 10 years from the restoration date of the privileges, and at the end of that period shall be removed from being posted on the board's Internet Web site.

(4) Notwithstanding paragraph (2), if a court finds, in a final judgment, that peer review resulting in a hospital disciplinary action was conducted in bad faith and the licensee notifies the board of that finding, the information concerning that hospital disciplinary action posted pursuant to paragraph (6) of subdivision (a) shall be immediately removed from the board's Internet Web site. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.

(c) The board shall also post on the Internet a factsheet that explains and provides information on the reporting requirements under Section 805.

(d) The board shall provide links to other Web sites on the Internet that provide information on board certifications that meet the requirements of subdivision (b) of Section 651. The board may provide links to other Web

sites on the Internet that provide information on health care service plans, health insurers, hospitals, or other facilities. The board may also provide links to any other sites that would provide information on the affiliations of licensed physicians and surgeons.

SEC. 8. Section 2220 of the Business and Professions Code is amended to read:

2220. Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. The board shall enforce and administer this article as to physician and surgeon certificate holders, and the board shall have all the powers granted in this chapter for these purposes including, but not limited to:

(a) Investigating complaints from the public, from other licensees, from health care facilities, or from the board that a physician and surgeon may be guilty of unprofessional conduct. The board shall investigate the circumstances underlying a report received pursuant to Section 805 or 805.01 within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to Section 805 and Section 805.01.

(b) Investigating the circumstances of practice of any physician and surgeon where there have been any judgments, settlements, or arbitration awards requiring the physician and surgeon or his or her professional liability insurer to pay an amount in damages in excess of a cumulative total of thirty thousand dollars ($30,000) with respect to any claim that injury or damage was proximately caused by the physician's and surgeon's error, negligence, or omission.

(c) Investigating the nature and causes of injuries from cases which shall be reported of a high number of judgments, settlements, or arbitration awards against a physician and surgeon.

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Sunday, December 5, 2010

Enforcement
Subcommittee Agenda

Agenda Item 7

Review of DHCC's Consumer Complaint Form

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR

Dental Hygiene Committee of California
2005 Evergreen Street, Suite 1050, Sacramento, CA 95815
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MEMORANDUM

DATE	September 27, 2010
TO	DHCC Subcommittee Members
FROM	Lori Hubble, Executive Officer Dental Hygiene Committee of California
SUBJECT	**ENF 7 – Review of DHCC's Complaint Form**

Staff has reviewed "Consumer Complaint Forms" of other boards within the department and developed draft complaint and disciplinary information that could be included in the complaint form or provided as an information pamphlet online.

Attached is a copy of the DHCC's current complaint form and suggested language regarding the complaint and disciplinary process.

THE COMPLAINT AND DISCIPLINARY PROCESS:

The Dental Hygiene Committee of California has authority over licensed registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended practice in California and has the authority to enforce the provisions of the Laws and Regulations Related to the Practice of Dental Hygiene (within the California Business and Professions Code and the California Code of Regulations). The Committee also handles complaints for the unlicensed practice of dental hygiene.

Complaints involving allegations that are not within the jurisdiction of the Committee will be returned to the complainant with information about other agencies or organizations that may be better able to assist the complainant. Allegations that are not within the authority of the Committee include fee/billing disputes, general business practices, personality conflicts, and providers who are licensed by other boards/bureaus such as dentists, and dental assistants.

You may file a complaint with the Dental Hygiene Committee of California by using the attached Consumer Complaint Form or by submitting it electronic from the Committee's website:

www.dhcc.ca.gov

Anonymous complaints will be reviewed by the Committee. It may not be possible to pursue an anonymous complaint unless it contains documented evidence of the allegations made.

Allegations of **unlicensed practice** will be investigated by the Committee and if sufficient evidence is found, will be forwarded to the local District Attorney's Office for criminal prosecution. Please submit proof of the unlicensed practice with your complaint (i.e. appoint card, invoices, website information, advertisements, business letterhead etc.).

Upon receipt, your complaint will be assigned to Enforcement Unit personnel for review. Within 10 days of receipt of the complaint, you will be notified of receipt. A staff person from the Enforcement Unit will gather the information necessary to review and evaluate your complaint. The information necessary may include patient records or written reports, a written response from the subject of the complaint, an opinion from a committee consultant, or possibly, a legal opinion. If the complaint file is sent for consultant review, the complainant will be notified.

If the review determines that the actions of the registered dental hygienist were not below the Standard of Care for dental hygienists, the Committee has no authority to proceed, and the complaint will be closed. If the Committee finds that the care fell below the Standard of Care, but does not represent gross negligence, generally the complaint will be closed and will be maintained on file

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for the Committee's further reference. Often complaints are dealt with through a variety of not-disciplinary methods which may include but are not limited to mediation between the parties involved, educational letters, cease and desist letters, warning letters or face-to-face educational interventions between the licensee and a Committee consultant.

If a complaint warrants formal investigation, the complainant can expect to be interviewed by investigator assigned to the case. Details of the complaint and investigation remain confidential and are not public record; details must be disclosed to the subject of the complaint at some point. The complainant is notified when a complaint is referred to investigation.

If a complaint is referred to investigation and a violation is confirmed, the case may be submitted to the Office of the Attorney General for disciplinary action against the dental hygienist's license. Once a case has been accepted by the Office of the Attorney General, an Accusation is then drafted. The accusation is the first public document in the disciplinary process. Once the Accusation is filed, the licensee may request a hearing to contest the charges. At the hearing, The Committee must demonstrate by "clear and convincing evidence to a reasonable certainty" that the allegations are true. For that reason, it is generally necessary tor the person who made the original complaint to testify in person at the administrative hearing.

In many cases, the defense counsel and the Deputy Attorney General representing the Committee may engage in discussions of proposals for stipulated agreements prior to hearing. Stipulated agreements generally include admission to one or more of the allegations and a proposal for appropriate discipline. The Committee encourages negotiated settlements because they eliminate the need for costly administrative hearing and protect consumers by imposing disciplinary action sooner. To this end the Committee has adopted Disciplinary Guidelines that are designed to set forth the Committee's penalty standards. You may obtain a copy of the guidelines by contacting the Committee's office, or by downloading it from the Committee's website. When a case does go to hearing, the hearing is presided over by an Administrative Law Judge (ALJ). After the hearing is completed the Judge (ALJ) will issue a "Proposed Decision" stating the judge's findings (facts proven in the hearing) and offer a recommendation for resolution of the case (i.e. revocation, suspension, probation, dismissal). The ALJ utilizes the Committee's Disciplinary Guidelines in formulating his or her recommendations. The Proposed Decision, distributed to the Committee members for vote. If the Committee votes in favor of the Proposed Decision, it becomes the Final Decision. If the Committee votes to non-adopt the Proposed Decision, the hearing transcript is reviewed by the Committee members, written arguments are

solicited from the defense counsel and the Committee's counsel, and the Committee subsequently issues its own Final Decision. Final Decisions are matters of public record. Disciplinary documents (i.e. Accusations and Final Decisions) will be automatically provided to the complainants in the case and available to the public through the Committee's website. The committee's goal is its disciplinary process should take no longer than 520 days.

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR
DENTAL HYGIENE COMMITTEE OF CALIFORNIA
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CONSUMER COMPLAINT FORM

PLEASE PRINT OR TYPE

COMPLAINT REGISTERED AGAINST

Name:			Name of Dental Office:
Address:			
City:	State:	Zip Code:	Office Phone Number:

PERSON REGISTERING COMPLAINT

Mr. ☐ Mrs. ☐ Ms. ☐	Name:		Relationship to Patient:
Address:			Home Phone Number:
City:	State:	Zip Code:	Work Phone Number:
Patient Name:		☐ Male ☐ Female	Patient's Date of Birth:

Legal authority to act on patient's behalf? If yes, must attach legal documentation.

Has patient been examined or treated by another hygienist for this same compliant? YES☐ NO☐
If yes, please provide full names and addresses on the back of this form.

DETAILS OF COMPLAINT

Dates of Visits:

State your complaint in detail:

NOTICE: As much information as possible should be provided, in addition to any supporting documents pertaining to your specific complaint. Failure to provide sufficient information or documentation may prevent or delay the review of your complaint. The information will be used to determine whether a violation of law has occurred. If a violation is substantiated, the information may be transmitted to other governmental agencies, including the Attorney General's Office. The Dental Hygiene Committee of California does not have jurisdiction over fee disputes or office business procedures.

DO NOT WRITE IN THIS SPACE

Signature_____ Date_____

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SUPPLEMENTAL COMPLAINT INFORMATION

PLEASE PROVIDE THE NAME, ADDRESS, TELEPHONE NUMBER AND DATE OF VISIT TO ANY OTHER HYGIENIST OR HYGIENIST IN ALTERNATIVE PRACTICE YOU HAVE SEEN SINCE BEING TREATED BY THE SUBJECT OF YOUR COMPLAINT.

1. _____
SUITE #
PHONE # DATE(S)

2. _____
SUITE #
PHONE # DATE(S)

3. _____
SUITE #
PHONE # DATE(S)

4. _____
SUITE #
PHONE # DATE(S)

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Authorization for Release of Dental/Medical Patient Records

Patient Name: _____ Date of Birth: _____

AUTHORIZATION TO RELEASE INFORMATION: I, the undersigned, authorize any physician, dentist, medical practitioner, hospital, clinic or other dental or dental related facility having records (original and/or electronic) available as to diagnosis, treatment and prognosis with respect to any dental or medical condition and/or treatment of me (or the patient) to release to the Dental Hygiene Committee of California or any Committee representative, related local, state and federal governmental agencies, including but not limited to, investigators and legal staff.

I understand that this information will be maintained in confidence and will be used solely in conjunction with any investigation and possible legal proceeding regarding any violations of California laws and regulations. I further agree to allow the Committee, Committee representatives and related governmental agencies, to process and possibly file other charges based on my complaint.

I also understand that the subject of my complaint may receive a copy of my complaint and records pursuant to the Administrative Procedures Act and the Information Practices Act.

I agree that a photocopy of this Authorization shall be as valid as the original. This Authorization shall remain valid until the Dental Hygiene Committee of California or other authorized Government Agency completes its review and the proceedings arising out of the investigation.

I understand that I have a right to receive a copy of this authorization if requested by me.
Patient/Guardian

Signature:_____Date:_____

Attach written proof of authorization to act on patient's behalf.

This release is in compliance with the requirements of Civil Code § 56.11.

Sunday, December 5, 2010

Enforcement
Subcommittee Agenda

Agenda Item 8

Proposed regulations to implement DCA recommendation to strengthen DHCC's enforcement program pursuant to Consumer Protection Enforcement Initiative (CPEI)

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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MEMORANDUM

DATE	September 27, 2010
TO	DHCC Subcommittee Members
FROM	Shirley Moody, Enforcement Dental Hygiene Committee of California
SUBJECT	**ENF 8 – Proposed regulations to implement DCA recommendation to strengthen DHCC's enforcement program pursuant to Consumer Protection Initiative (CPEI)**

At the September 27, 2010 meeting, it was decided to bring forward language as recommended by the Department of Consumer Affairs to help streamline the enforcement process. Attached is the language for your review and acceptance.

ARTICLE 10. Disciplinary Guidelines

§1138. Delegation of Functions

Except for those powers reserved exclusively to the "agency itself" under the Administrative Procedure Act, (Section 11500, et seq. of the Government Code, the Committee delegates and confers upon the Executive Officer, or the designee of the Executive Officer, all functions necessary to the dispatch of business of the Committee in connection with investigative and administrative proceedings under the jurisdiction of the Committee, including but not limited to, the ability to accept default decisions and to approve settlement agreements for the revocation, surrendered or interim suspension of a license.

§1138.2 Required Actions against Registered Sex Offenders.

(a) Except as otherwise provided, if an individual Is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the Committee shall:

(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) Promptly revoked the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license or probation.

(3) Deny any petition to reinstate or reissue the license.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration; provided, however, that nothing in this paragraph shall prohibit the Committee from exercising its discretion to deny or discipline a licensee under any other provision of state law.

(2)An individual who is required to registered as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the Committee from exercising its discretion to deny or discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.

(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) of this Section against reinstating a license shall govern.

Note: Authority cited: Sections 1950 and 1950.5, Business and Professions Code; and Sections 11400.20, Government Code. Reference: Sections 1950 Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

§1138.3 Unprofessional Conduct.

In addition to the conduct described in Section 1950.5 of the Code, "unprofessional conduct" also includes but is not limited to the following:

(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice to which the licensee is or expects to be named as a party, whether the agreement is made before or after the filing of an action:
  (1) A provision that prohibits another party to the dispute from contacting cooperating or filing a compliant with the Committee.
  (2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the Committee.
(b) Failure to provide to the Committee, as directed, lawfully requested copies of document within fifteen (15) days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to and control over, medical records.
(c) The commission of any act of sexual abuse or misconduct.
(d) Failure to cooperate and participate in any Committee investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privileges and shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.
(e) Failure to report to the Committee within thirty (30) days any of the following:
  (1) The bringing of an indictment or information charging a felony against the licensee.
  (2) The arrest of the licensee.
  (3) The conviction of the licensee including any verdict of guilty or pleas of guilty or no contest of any felony or misdemeanor.
  (4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States Military.
(f) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena mandating the release of records to the Committee.
(g) Failure to comply with an order of abatement or pay a fine imposed by the Committee.

Note: Authority cited: Sections 1950.5 Business and Professions Code; and Sections 11400.20, Government Code. Reference: Sections 1950.5, Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.